

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/CS/SB 572

SPONSOR: Criminal Justice Committee, Commerce and Consumer Services Committee, and Senator Garcia and others

SUBJECT: Consumer Protection/Emergencies

DATE: April 13, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seibert	Cooper	CM	Fav/CS
2.	Pardue	Skelton	DS	Favorable
3.	Cellon	Cannon	CJ	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute provides that upon the Governor's declaration of a state of emergency, any person who offers goods and services for sale to the public during a declared state of emergency without possessing an occupational license commits a second-degree misdemeanor. The bill provides an exemption for religious, charitable, fraternal, civic, educational, or social organizations.

This committee substitute also authorizes the Governor, during the emergency period, to exempt businesses who sell essential commodities from curfew restrictions. In addition, the Governor may authorize solid waste disposal facilities to operate with extended hours to ensure the health, safety, and welfare of the general public.

This committee substitute amends sections 501.160 and 252.36 of the Florida Statutes.

II. Present Situation:

Price Gouging Violations

In the aftermath of the four hurricanes that struck Florida in 2004, some individuals and merchants increased prices for essential goods and services in the storm affected areas.

In response, the Office of Attorney General received over 8,700 complaints regarding price gouging. Out of those complaints, 13 law suits were filed for violations of price gouging and unfair and deceptive trade practices.

The Department of Agriculture and Consumer Services' Division of Consumer Services (division) also received 6,526 calls regarding price gouging resulting in 3,033 investigations. The division received 584 gasoline price gouging complaints resulting in five warning letters and recommendations for fines in two cases. In addition, the department's Bureau of Investigative Services (BIS) processed 284 tips received from citizens and other sources. Out of those, a total of three criminal cases were accepted for criminal prosecution, and charges were filed. All cases worked by the BIS not resulting in criminal prosecution were forwarded to the division for possible administrative actions.

Under current statute, the state may seek civil penalties for such violations. Florida prohibits the rental or sale of essential commodities for unconscionable prices during a declared state of emergency.¹ A commodity is defined as any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce which includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency.² A price is unconscionable if there is a gross disparity between the price charged for the commodity and the average price of that commodity during the 30 days prior to a declaration of a state of emergency, with exceptions.³ A price is also unconscionable if the amount charged grossly exceeds the average price during the 30 days prior to a declaration of a state of emergency.⁴ Civil penalties may be assessed to include a penalty of not more than \$1,000 per violation with an aggregate total not to exceed \$25,000 for any 24-hour period.⁵

Additionally, current statute declares all unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce to be unlawful.⁶ The civil penalty for willfully violating the statute is a penalty of not more than \$10,000 for each violation⁷ and \$15,000 for each violation that victimizes a senior citizen or handicapped person.⁸

Governor's Executive Powers

During a declared state of emergency, the Governor has extensive authority to act as he or she deems necessary. Section 252.36(1), F.S., provides, in part, that "in the event of an emergency beyond local control, the Governor...may assume" or delegate "direct operational control over all or any part of the emergency management functions within this state..." In addition, the Governor may "issue executive orders, proclamations, and rules" which "shall have the force and effect of law." Subsection (5) specifically authorizes the Governor to use all resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency.

¹ Section 501.160(2), F.S.

² Section 501.160(1)(a), F.S.

³ Section 501.160(1)(b), F.S.

⁴ *Id.*

⁵ Section 501.164, F.S.

⁶ Section 501.204, F.S.

⁷ Section 501.2075, F.S.

⁸ Section 501.2077, F.S.

The Governor is also directed to “take such action and give such direction to state and local law enforcement officers,” and state health officials as may be “reasonable and necessary” to secure compliance with the State Emergency Management Act and the Florida Hazardous Materials Emergency Response and Community Right-To-Know Act in ch. 252, F.S.

A declared State of Emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.

Local Occupational License Taxes

Chapter 205, F.S., authorizes counties and municipalities to issue local occupational licenses, and levy occupational license taxes for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. These are required for permanent business locations in municipalities. The statutory provisions related to the counties do not appear to be as specific.

III. Effect of Proposed Changes:

Section 1 amends s. 501.160, F.S., to provide that any person who offers goods and services for sale to the public during a declared state of emergency without possessing an occupational license commits a second-degree misdemeanor. Commission of a misdemeanor of the second degree is punishable by imprisonment of up to 60 days or a fine up to \$500. Religious, charitable, fraternal, civic, educational, or social organizations are exempted from the requirement to have an occupational license during an emergency.

During a declared state of emergency, this committee substitute provides that failure to possess an occupational license when there is an allegation of price gouging, constitutes reasonable cause to detain the person for a reasonable amount of time and in a reasonable manner that is sufficient to inquire into the surrounding circumstances.

Section 2 amends s. 252.36, F.S., to authorize the Governor to exempt businesses who sell essential commodities from curfew restrictions. In addition, the bill provides that the Governor may, by executive order, authorize solid waste disposal facilities to operate with extended hours to ensure the public health, safety, and welfare.

Section 3 provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This committee substitute provides that any person offering goods and services for sale during a state of emergency must have an occupational license, unless specifically exempted. These occupational licenses are currently required for permanent business locations in municipalities, and certain non-specified businesses in the counties.

C. Government Sector Impact:

Government entities that elect to pursue prosecution for violations of this committee substitute will incur related legal and administrative costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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